

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	WEAVER et al.	Confirmation No.:	6518
Serial No.:	10/6665,431	Art Unit:	3733
Filed:	September 22, 2003	Examiner:	James L. Swiger III
For:	BONE PLATING SYSTEM	Attorney Docket No.:	8932-807-999

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the duty of disclosure provisions of 37 C.F.R. §1.56 and MPEP § 2001.06(c), there is hereby provided certain information regarding the existence of a litigation associated with the subject U.S. patent application. The subject application and United States Patent No. 7,128,744 ("the '744 patent") are both continuation applications of U.S. Patent Application Serial No. 09/660,287, which issued as U.S. Patent No. 6,623,486 ("the '486 patent"). Both the '486 patent and the '744 patent have recently been asserted in a patent infringement litigation captioned *Synthes (U.S.A.) v. Smith & Nephew, Inc.*, Civil Action No. 03-0084, pending in the U.S. District Court for the Eastern District of Pennsylvania. It is requested that the Examiner make this information of record if it is deemed material to the examination of the application.

1. Enclosures accompanying this Information Disclosure Statement are:

- 1a. ☒ A list of all patents, publications, applications, or other information submitted for consideration by the office.
- 1b. A legible copy of:
 - ☒ Each publication or that portion which caused it to be listed on the PTO-1449;
 - ☐ For each cited pending unpublished U.S. application, the application specification including the claims, and any drawing of the application, or portion of the application which caused it to be listed on the PTO-1449 including any claims directed to that portion that have been checked to be unavailable at the USPTO's private PAIR system;
 - ☐ An English language copy of search report(s) from a counterpart foreign application or PCT International Search Report;
 - ☐ Explanations of relevancy (ATTACHMENT 1(d), hereto) or English language abstracts of the non-English language publications;
 - ☐ All other information or portion which caused it to be listed on the PTO-1449.
- 1c. ☐ Pursuant to 37 C.F.R. § 1.98(a)(2)(ii), copies of the cited U.S. patents and U.S. patent application publications are not submitted herewith unless required by the office.

- 1d. ☐ Pursuant to 1287 OG 163, copies of cited pending unpublished applications that are available at the USPTO's private PAIR system are not submitted herewith.
2. ☐ This Information Disclosure Statement is filed under 37 C.F.R. §1.97(b):
- ☐ Within three months of the filing date of a national application other than a continued prosecution application under §1.53(d);
 - ☐ Within three months of the date of entry of the national stage as set forth in §1.491 in an international application;
 - ☐ Before the mailing of the first Office action on the merits;
 - ☐ Before the mailing of a first Office action after the filing of a request for continued examination under §1.114.
3. ☒ This Information Disclosure Statement is filed under 37 C.F.R. §1.97(c) after the period specified in 37 C.F.R. §1.97(b), but before the mailing date of any of a final action under 37 C.F.R. §1.113, a notice of allowance under 37 C.F.R. §1.311 or an action that otherwise closes prosecution in the application.

(Check either Item 3a or 3b)

- 3a. ☐ The Certification Statement in Item 5 below is applicable. Accordingly, no fee is required.
- 3b. ☒ The \$180.00 fee set forth in 37 C.F.R. §1.17(p) in accordance with 37 C.F.R. §1.97(c) is:
- ☐ enclosed.
 - ☒ to be charged to Jones Day Deposit Account No. 50-3013.

(Item 3b to be checked if any reference known for more than 3 months)

4. ☐ This Information Disclosure Statement is filed under 37 C.F.R. §1.97(d) after the period specified in 37 C.F.R. §1.97(c), but on or before the date of payment of the issue fee.

The Certification Statement in Item 5 below is applicable.

The \$180.00 fee set forth in 37 C.F.R. §1.17(p) is:

- ☐ enclosed.
 - ☐ to be charged to Jones Day Deposit Account No. 50-3013.
5. ☐ Certification Statement (applicable if Item 3a or Item 4 is checked):

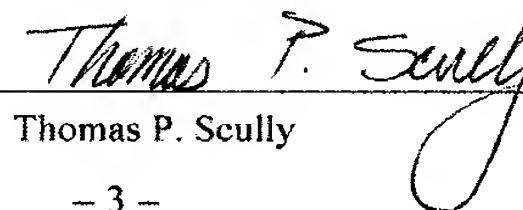
(Check either Item 5a or 5b)

- 5a. ☐ In accordance with 37 C.F.R. §1.97(e)(1), it is certified that each item of information contained in this Information Disclosure Statement was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement.
- 5b. ☐ Each item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart application, and the communication was not received by any individual designated in 37 C.F.R. §1.56(c) more than thirty days prior to the filing of this information disclosure statement.

- 5c. ☐ Pursuant to 37 C.F.R. §1.704(d), each item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart application, and the communication was not **received** by any individual designated in 37 C.F.R. §1.56(c) more than thirty days prior to the filing of this information disclosure statement.
6. ☒ This application is a continuation application under 37 C.F.R. §1.53(b) or (d).
(Check appropriate Items 6a, 6b and/or 6c)
- 6a. ☐ A Petition to Withdraw from issue under 37 C.F.R. §1.313(b)(5) is concurrently filed herewith.
- 6b. ☐ Copies of publications listed on Form PTO-1449 from prior application Serial No. _____, filed on _____, of which this application claims priority under 35 U.S.C. §120, are not being submitted pursuant to 37 C.F.R. §1.98(d).
- 6c. ☒ Copies of the publications listed on Form PTO-1449 were not previously cited in prior application Serial No. 09/660,287, filed on September 12, 2000, and are provided herewith.
7. ☐ This is a Supplemental Information Disclosure Statement. (Check Item 7a)
- 7a. ☐ This Supplemental Information Disclosure Statement under 37 C.F.R. §1.97(f) supplements the Information Disclosure Statement filed on _____. A bona fide attempt was made to comply with 37 C.F.R. §1.98, but inadvertent omissions were made. These omissions have been corrected herein. Accordingly, additional time is requested so that this Supplemental Information Disclosure Statement can be considered as if properly filed on _____.
8. ☐ In accordance with 37 C.F.R. §1.98, a concise explanation of what is presently understood to be the relevance of each non-English language publication is:
(Check Item 8a, 8b, or 8c)
- 8a. ☐ Satisfied because all non-English language publications were cited on the enclosed English language copy of the PCT International Search Report or the search report from a counterpart foreign application indicating the degree of relevance found by the foreign office.
- 8b. ☐ Set forth in the application.
- 8c. ☐ Enclosed as an attachment hereto.
9. ☒ The Commissioner is authorized to charge any additional fee required or credit any overpayment for this Information Disclosure Statement and/or Petition to Jones Day Deposit Account No. 50-3013.
10. ☒ No admission is made that the information cited in this Statement is, or is considered to be, material to patentability and no representation is made that a search has been made (other than a search report of a foreign counterpart application or PCT International Search Report if submitted herewith). 37 C.F.R. §§1.97(g) and (h).

Respectfully submitted,

Date: March 5, 2007


Thomas P. Scully

45,086
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LIST OF REFERENCES CITED BY APPLICANT (Use several sheets if necessary)	ATTY. DOCKET NO. 8932-807-999	APPLICATION NO. 10/665,431
	APPLICANT WEAVER et al.	
	FILING DATE September 22, 2003	ART UNIT 3733

U.S. PATENT DOCUMENTS

*Examiner Initials		Document Number	Date mm/dd/yy	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
	A01				
	A02				
	A03				
	A04				

FOREIGN PATENT DOCUMENTS

*Examiner Initials		Foreign Patent Document Country Code, Number, Kind Code (if known)	Date mm/dd/yy	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T
	B01					
	B02					
	B03					
	B04					

NON PATENT LITERATURE DOCUMENTS

*Examiner Initials		Include name of the author (in CAPITAL LETTERS), (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T
	C01	Amended Complaint For Patent Infringement, Civil Action No. 03-0084 (E.D. Pa.), filed November 13, 2006.	
	C02	Answer to Amended Complaint And Counterclaims, Civil Action No. 03-0084 (E.D. Pa.), filed December 5, 2006.	
	C03	Reply to Counterclaims, Civil Action No. 03-0084 (E.D. Pa.), filed January 2, 2007.	
	C04	Plaintiff's Initial Disclosures, Civil Action No. 03-0084 (E.D. Pa.), dated January 12, 2007.	
	C05	Initial Disclosures of Defendant, Civil Action No. 03-0084 (E.D. Pa.), dated January 12, 2007.	
	C06		
	C07		
	C08		
	C09		
	C10		
	C11		
	C12		

NYI-3970297v1

EXAMINER

DATE CONSIDERED

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.